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Supreme Court, U.S.
FILED

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

DANNY VAUGHAN,
Petitioner,

v.

FIRST NATIONAL BANK of
SHAMROCK, TEXAS, et. al.
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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32 pp

QUESTIONS PRESENTED

A bankruptcy court *sua sponte* modified the stay provided for by 11 U.S.C. §362, in a case commenced under chapter 7 of the Bankruptcy Act, at a *ex parte* hearing conducted with no attempt to notice the debtor. The questions presented are:

1. Whether a bankruptcy court can modify the automatic stay without affording the debtor the opportunity to be heard?

2. Whether a court of appeals and a district court's refusal to recognize violation of the due process clause of the Fifth Amendment on a record barren of any evidence of notice, constitutes due process denials by Government sufficient to call for an exercise of this Court's power of supervision?

LIST OF PARTIES

The parties to the proceedings in the United States Court of Appeals for the Tenth Circuit were petitioner Danny Vaughan and respondents: First National Bank of Shamrock, TX, James C. Fling, Belinda Seay, Phillip Pendleton, First Bank and Trust of Shamrock, TX, Kenneth Fields, Waters Holt & Fields, Amarillo National Bank, Crabileigh Vaughan, D. Craig Shew, Smith Shew & Scrivner, P.C., Richard Bird, Bird & Bird, Great Plains Breeders Service, Inc., E. Byron Range, Jr., First National Bank of Wheeler, TX, Winstead Sechrest & Minick P.C., Beverly E. Landis, Taurus Breeders Service, Inc., Ben Westlund, Randy Camp, Moore Camp & Co., CPA's, Doug Mills, Jr., William and Edith Carr, Doug and Gertie Mills, Mitchell and Rose Wong, Perry and Sidney White, Wayne and Imogene Cudd, Morris Westland, Edith Young, Mike Mordy, Mordy & Mordy, Inc. Stan Comer, First National Bank of Pampa, TX, Marshall O. Pence, Barbara Pence, First Community Bank of Lone Grove, OK., and Jack Banner.

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

DANNY VAUGHAN, *Petitioner,*

v.

FIRST NATIONAL BANK of
SHAMROCK, TX., et. al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner Danny Vaughan respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this case on December 23, 1993.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is not reported, and reprinted in the Appendix ("App.") *infra* at A-1 - A-4 (cited herein as "Opinion, App.-___"). The Tenth Circuit's January 10, 1994

Order denying petitioner's timely petition for rehearing is reprinted at App. A-5.

The district court's Order (Frank H. Seay, United States District Judge) denied petitioner's bankruptcy appeal (reprinted at App. A-6 - A-8) and affirmed the bankruptcy court's Order (James E. Ryan, United States Bankruptcy Judge; reprinted at App. A-10 - A-12) of July 15, 1992, dismissing petitioner's adversary complaint.

JURISDICTION

Petitioner's adversary proceeding filed in the United States Bankruptcy Court for the Eastern District of Oklahoma invoked the court's jurisdiction under 28 U.S.C. §157(a).

Petitioner timely appealed the bankruptcy court's denial of his claim for damages for the willful violation of the automatic stay provided by 11 U.S.C. §362(h). Under 28 U.S.C. §158(a) the United States District Court for the Eastern District of Oklahoma entered its order affirming the bankruptcy court's ruling, and Petitioner timely appealed the district court's order to the United States Court of Appeals for the Tenth Circuit.

On December 23, 1993, the Tenth Circuit affirmed the district court under 28 U.S.C. §158(d). On January 10, 1994

the Tenth Circuit entered its order denying petitioner's timely petition for rehearing.

This court has jurisdiction to review the judgment of the Tenth Circuit under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS and STATUTES INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "nor shall any person * * * nor be deprived of life, liberty, or property, without due process of law; * * * ."

The statute providing for an automatic stay in bankruptcy, 11 U.S.C. §362(a) reads in pertinent part as follows:

> Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities * * *

The statute describing the situations in which the Government may modify the bankruptcy stay, 11 U.S.C. §362 (d) reads in pertinent part as follows:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay —
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if —
>
> (A) the debtor does not have an equity in such property; and
>
> (B) such property is not necessary to an effective reorganization.

11 U.S.C. §362(h), dealing with stay violations, provides as follows:

> An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including cost and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

STATEMENT OF THE CASE

Petitioner ("Debtor") commenced a case under Chapter 7, Section 301 of Title 11 of the United States Code on October 5, 1990 in the United States Bankruptcy Court for the Eastern District of Oklahoma ("Bankruptcy Court"). As required by 11 U.S.C. §341, a meeting of creditors was properly conducted. In December, 1990 petitioner's non-debtor, estranged wife, respondent Crabileigh Vaughan ("Wife"), filed an amendment to the Debtor's list of exempt property. Respondent, First National Bank of Shamrock, Texas ("Bank") filed the only timely exception to discharge claiming that the Bank had been defrauded by the Debtor. An answer was timely filed on behalf of the Debtor to the Bank's objection to discharge, and both the appointed chapter 7 trustee and the Bank filed an objection to the Wife's amendment to the Debtor's list of exempt property.

The Clerk of the United States Bankruptcy Court for the Eastern District of Oklahoma ("Clerk") mailed a notice of a hearing set for January 23, 1991 to consider the objections of the trustee and the Bank to the Wife's amendment; however, the Clerk, six days prior to the date set for the hearing, mailed a notice of the continuance of this hearing until a future date that was to be provided to the interested

parties by the Clerk when reset by the Bankruptcy Court. No subsequent notice was provided to the potentially interested parties to the case, including the debtor.

In November, 1991, petitioner obtained information that led to his discovery that the Bankruptcy Court had entered an order that was not distributed to the parties in interest by the Clerk, which indicated that the Bankruptcy Court *sua sponte* modified the automatic stay, at a hearing on January 30, 1991 attended by counsel for the Bank, counsel for the Wife, and the trustee, for the purpose of allowing a Texas divorce court to divide the community estate of the Debtor and his estranged wife, thus indirectly defining the property of the estate in bankruptcy. The Debtor (petitioner herein) also discovered that a *ex parte* divorce proceeding had been concluded in Texas without proper notice to this petitioner, in which the Wife was awarded the community assets, and that the Bank had obtained a judgment, as a recent intervenor in the Texas divorce action, on issues identical to those in the adversary proceeding initiated by the Bank in the bankruptcy case, objecting to the discharge. The Bank, by virtue of the *ex parte* state court judgment, had received a favorable judgment on a motion for summary judgment in its adversary proceeding in the bankruptcy case, imposing

a non-dischargable debt in excess of $500,000 on this Debtor. Each of the foregoing events occurred without any active participation by the Debtor.

Petitioner (Danny Vaughan), originated this case upon the filing, on his own behalf, a verified complaint as an adversary proceeding in the United States Bankruptcy Court for the Eastern District of Oklahoma (Bankruptcy Court) complaining of respondents conspiracy in the (1) violation of petitioners civil rights pursuant to 42 U.S.C. §1983; (2) violation of petitioner's constitutional rights as guaranteed by the Constitution of the United States; (3) malpractice; (4) fraud; (5) deprivation of equal protection the law; and (6) violation of 11 U.S.C. §362(h), seeking damages for willful violation of the automatic stay.

The Bankruptcy Court entered its order, upon independent review, determining that petitioner's first five actions were non-core, and as such, the Bankruptcy Court lacked jurisdiction to address the merits of those claims. The Bankruptcy Court did determine, by this independent review, that the stay had been properly modified and dismissed the adversary proceeding. (App.-11).

On petitioner Vaughan's appeals challenging the validity of the stay modification, the District Court stated it was in complete agreement with the Bankruptcy Court's ruling (App.-7), and the Tenth Circuit entered its order and judgment affirming the District Court, and went on to hold that bankruptcy courts may *sua sponte* issue any necessary or appropriate order for the administration of the estate including modifications of the automatic stay, specifically to allow state courts to conclude divorce proceedings (Opinion, App.-3 - App.-4).

The opinion of the panel states:

> "[t]he Bankruptcy Court Clerk then sent notice to Mr. Vaughan and his attorney, advising them of an upcoming hearing on the objections to the Amendment. Neither Mr. Vaughan nor his attorney attended the hearing."(Opinion, App.-2).

implying that petitioner was absent by his own choice, and ignoring the cancellation of the hearing that had been previously noticed by the Clerk. A reference, in a respondent's brief, to the Clerk's notice of hearing was the source of information in the record utilized by the appellate panel to formulate the above statement. This erroneous preface to the Tenth Circuit's discussion of the case was the

only mention of notice in the Opinion. In reaching the foregoing conclusion, the three judge appellate panel either mistakeniy overlooked, misunderstood or simply ignored the indisputable fact that a notice of a hearing was not a part of the record before the Tenth Circuit.

Although Vaughan's petition for rehearing was denied by the panel that rendered the Opinion, that petition brought the Clerk's subsequent cancellation of the notice to the attention of the panel.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT SECURING THE FIFTH AMENDMENT RIGHT TO DUE PROCESS

A.

THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT REGARDING NOTICE

It is of widespread public importance that this Court consider the issues here presented so that the lower courts and the public may be guided authoritatively with respect to the constitutional limitations on a bankruptcy court's latitude in the administration of estates in bankruptcy.

Although the assets of the petitioner were defined and distributed by persons acting under color of state law in the Texas *ex parte* divorce proceeding, these persons were only able to act after the stay had been modified. The United States Congress has provided a substantial right by creating a statute (11 U.S.C. §301) which allows a person to voluntarily invoke Federal jurisdiction without adjudication, and receive benefits such as the automatic stay, applicable to all entities, provided by 11 U.S.C. §362(a). A procedure, that specifically requires prior notice, is provided in the statute to properly modify the stay, and when followed, does not offend the principals of due process. 11 U.S.C. §362(d).

In this case, the only possible notice the respondents could suggest to meet the notice requirement of the statute, was a notice for a hearing on objections to an amendment filed by a bankruptcy creditor. Although this hearing was subsequently canceled by the bankruptcy court, and the hearing in which the stay was actually modified occurred on a day different from the date setforth in the notice, the courts below have ruled that the stay was properly modified with this as notice.

The judgments below conflict sharply with the minimum requirements of due process of law as this Court declared in Mullane v. Central Hanover Trust Co., 339 U.S. 306, (1950).

As was emphasized in Mullane, the requirements that parties be notified of proceedings affecting their legally protected interest is obviously a vital corollary to one of the most fundamental requisites of due process - the right to be heard. "This right * * * has little reality or worth unless one is informed that the matter is pending and can choose for himself to appear or default, acquiesce or contest." Schroeder v. City of New York, 371 U.S. 208, 212 (1962). The fact a notice of a hearing specifically concerning, or even suggesting that the a stay was to be modified in this case was never distributed to those in interest is undisputed.

It is submitted that a debtor's rights to the due process guarantee of the Fifth Amendment is at least as important as any other citizen's right to due process, and the proceedings of a bankruptcy court must be consistent, in this regard, with all other courts by making every reasonable effort to issue constitutionally valid decisions. For this reason it is submitted that this case presents a question of public importance, that being the validity of the stay modification, which merits review by this Court.

B.

THE TENTH CIRCUIT'S DECISION IS CONTRARY TO WELL ESTABLISHED PRECEDENTS OF THIS COURT REGARDING THE DUTY OF FEDERAL COURTS TO BE ALERT TO PREVENT THE VIOLATION OF IMPORTANT RIGHTS SECURED BY FEDERAL LAWS

It is elementary that a court must rule on an issue that is before the court on the basis of the record presented. Equally fundamental, is the requirement that the decision maker(s) in judicial proceedings be disinterested and decide the issues on the basis of established law. Any deviation from these basic rules constitutes denials of due process.

From the onset, the petitioner has argued the bankruptcy stay modification was invalid. This argument is consistent with previous rulings in the Tenth Circuit, recognizing that a judgment is void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. In re: Four Season Securities Law Litigation, 502 F2d. 834 (10th Cir. 1974), cert. denied, 419 U.S. 1034 (1975).

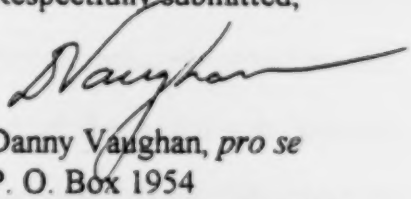
The decisions below focus on the discretionary authority of a bankruptcy court to modify a stay in order to allow state court divorce proceedings to proceed. These statements of law by the lower courts failed to address the issue of the appeal, which clearly was a debtor's challenge to the validity of an order entered in a manner inconsistent with due process which modified the automatic stay.

The Tenth Circuit's opinion based upon its erroneous statement that notice of the hearing modifying the stay had been provided to the debtor and the suggestion that the debtor chose to not attend, none of which was supported by the record before the three judge panel, represents such a departure from the accepted and usual course of judicial proceedings as to warrant the exercise of this Court's supervisory powers to correct the Tenth Circuit's patent error, and to prevent an injustice from occurring which would render Danny Vaughan's right to due process meaningless.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,



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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 93-7032

Danny Vaughan, Appellant,	*	
v.	*	Appeal from the United States District Court for the Eastern District of Oklahoma
First National Bank of Shamrock, Texas, et al. Appellees.	*	

Entered: December 23, 1993
Before TRACHA, BALDOCK, and KELLY, Circuit Judges.

ORDER AND JUDGMENT *

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir.R.36.3.

Danny Vaughan appeals from an order of the district court affirming the bankruptcy court's dismissal of his adversary proceeding complaint. We exercise jurisdiction under 28 U.S.C. §158 (d) and affirm.

I. Background

In November 1989, Mr. Vaughan's wife, Crabileigh Vaughan, filed a petition for divorce in Wheeler County, Texas. In October 1990, before the divorce was finalized, Mr. Vaughan filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Eastern District of Oklahoma ("Bankruptcy Court"). Ms. Vaughan, who was not a debtor in the bankruptcy case, filed an Amendment to List of Exempt Property ("the Amendment") asserting that Mr. Vaughan had failed to file a complete list of exempt property. The Bankruptcy Court Clerk then sent notice to Mr. Vaughan and his attorney, advising them of an upcoming hearing on the objections to the Amendment. Neither Mr. Vaughan nor his attorney attended the hearing. In an order dated February 4, 1991, the Bankruptcy Court denied the objections to the Amendment and sua sponte modified the automatic stay of 11 U.S.C. §362 to permit the completion of the pending divorce action in Wheeler County, Texas.

On July 2, 1992, Mr. Vaughan filed an adversary proceeding complaint in the Bankruptcy Court against approximately 130 individuals and entities alleging, among other things, willful violations of the automatic stay. The Bankruptcy Court dismissed Mr. Vaughan's complaint, concluding that the automatic stay had been properly modified by the February 4, 1991 order to permit the conclusion of the pending divorce action in the Texas state court. The United States District Court for the Eastern District of Oklahoma affirmed. Mr. Vaughan now appeals, arguing that his complaint should not have been dismissed because the Bankruptcy Court and the district court erred in holding that the automatic stay was properly modified by the February 4, 1991 order.

II. Discussion

The decision to modify the automatic stay is within the sound discretion of the bankruptcy judge. Pursifull v. Eakin 814 F.2d 1501, 1504 (10th Cir. 1987). We review a judge's decision to lift the automatic stay for an abuse of discretion. Id.

We find that the Bankruptcy Court did not abuse its discretion in sua sponte lifting the automatic stay of 11 U.S.C. §362 to permit the completion of the pending divorce

action in Wheeler County, Texas. Section 105(a) of the Bankruptcy Code allows bankruptcy courts to sua sponte issue any order necessary or appropriate for the administration of the estate including modifications to the automatic stay. See in re Bellucci, 119 B.R. 763, 778-79 (Bankr. E. D. Cal. 1990) (Automatic stay lifted sua sponte to permit state court appeal); In re Laventhol & Horwath, 139 B.R. 109, 116 N.6 (S.D.N.Y. 1992) (bankruptcy court may, if necessary, sua sponte modify the automatic stay in light of the 1986 amendment to 11 U.S.C. §105 (a)). Specifically, bankruptcy courts may lift the automatic stay to allow state courts to conclude divorce proceedings. See, e.g., In re White, 851 F.2d 170, 173 (6th Cir. 1988).

We find the remainder of Mr. Vaughan's arguments meritless. We AFFIRM the district court order affirming the Bankruptcy Court's dismissal of Mr. Vaughan's adversary proceeding complaint. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 93-7032

Danny Vaughan, Appellant,	*	
	*	Order Denying Petition
v.	*	for Rehearing
	*	
First National Bank of Shamrock, Texas, et al. Appellees.	*	

Entered January 10, 1994

ORDER

Before TRACHA, BALDOCK, KELLY, Circuit Judges.

This Matter comes on for consideration of appellant's petition for rehearing.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

Entered for the Court
ROBERT L. HOECKER, CLERK

By: /s/ Patrick Fisher
PATRICK FISHER
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

Danny Vaughan,
Appellant,

v.

First National Bank of Shamrock, Texas, et al.,
Appellees.

No. CIV-92-526-S

Entered March 31, 1993

ORDER and MEMORANDUM OPINION

The Appellant appeals the Bankruptcy Court's Order of July 15, 1992, wherein that Court, on its own motion, dismissed the appellant's complaint in an associated adversary proceeding. Appellant contends that the Bankruptcy Court's reliance on its Order of February 4, 1991, in the main bankruptcy case, which modified the automatic stay in that bankruptcy case to permit the completion of divorce proceedings involving the appellant in the State Court of Texas, was error.

In its Order of July 15, 1992, the Bankruptcy Court found that:

A. Appellant had initiated his adversary complaint on six bases or causes: (1) violation of appellant's civil rights pursuant to 42 U.S.C. §1983; (2) violations of appellant's constitutional rights; (3) malpractice; (4) fraud;

(5) deprivation of equal protection of the law; and (6) violation of the automatic stay in the bankruptcy case.

B. As a matter of law, the bankruptcy court lacked jurisdiction to adjudicate the first five bases or causes, because they are non-core matters, unrelated to appellant's bankruptcy case.

C. As to the sixth bases, alleged violation of the automatic stay, the automatic stay in the main bankruptcy case to which this adversary proceeding is associated was properly modified on February 4, 1991, to permit the Texas State Court action, appellant's divorce proceeding, to be completed. (Record on Appeal #2).

The only issue in this appeal is part "C" of the above order, the validity of the modification of the automatic stay in the main bankruptcy case on February 4, 1991. In its Order of February 4, 1991, the Bankruptcy Court found "that proper notice was given to all interested parties and that no appearance was entered at the hearing on behalf of the Debtor (appellant)". That Court then "ordered that the Court sua sponte modifies the Automatic Stay to permit the conclusion of the pending divorce action in Wheeler County District Court in Texas." (Record on Appeal #3). The appellant did not appeal the February 4, 1991, Order, nor did he seek relief through Rules 59 and 60 of the Federal Rules of Civil Procedure, as made applicable to bankruptcy proceedings by Rules 9023 and 9024 of the Bankruptcy Rules. Thus, the Bankruptcy Court's Order of February 4,

1991, became, and is , a final, valid order, and appellant cannot circumvent the requirements of Rules 8001 and 8002 by appealing the Bankruptcy Court's subsequent Order of July 15, 1992. Department of Air Force v. Carolina Parachute Corp., 907 F.2d 1469 (4th Cir. 1990); Federated Department Stores, Inc. v. Moitie, 452 U.S. 394 (1981); Goss v. Goss, 722 F.2d 599 (10th Cir. 1983).

This Court finds that the Bankruptcy Court's Findings of Fact are correct, and that they are not clearly erroneous. Rule 8013, Bankruptcy Rules. This Court finds that it is in complete agreement with the Bankruptcy Court's Conclusions of Law as applied to the facts herein. Further, this Court finds that the Bankruptcy Court did not abuse its discretion in modifying the automatic stay of 11 U.S.C. §362 on February 4, 1991, and was correct in dismissing appellant's adversary complaint. See, Pursifull v. Eakin, 814 F.2d 1501, 1504 (10th Cir. 1987); Hayes v Production Credit Ass'n of the Midlands, 955 F 2.d 49 (10th Cir. 1992), (unpublished, WLCTA10 database).

Accordingly, the Court Finds Appellant's issue without merit and affirms the Bankruptcy Court's Order of July 15, 1992, dismissing appellant's complaint in the adversary proceeding.

IT IS ALL SO ORDERED this 31 day of March, 1993.

/s/ Frank H. Seay
FRANK H. SEAY
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:

Danny Vaughan, d/b/a Shamrock Vet Clinic and Texoma Analytical Lab, Debtor,	*	Case No. 90-71175
	*	Chapter 7
Danny Vaughan, Plaintiff,	*	
v.	*	Adv. No. 92-7037
First National Bank of Shamrock, Texas, et al., Defendants.	*	

Entered July 15, 1992

ORDER

On this 15th day of July, 1992, the Complaint filed in the above-referenced adversary proceeding came before this Court for independent review.

Based upon that review, this court does hereby find that the Plaintiff has initiated this action on six bases: (1) that the Defendants have violated the Plaintiff's civil rights pursuant to 42 U. S. C. §1983; (2) violation of Plaintiff's constitutional rights guaranteed by the Constitution of the United States; (3) malpractice; (4) fraud; (5) deprivation of equal protection

under the law: and (6) violations of 11 U.S.C. §362 (h), seeking damages for violation of the automatic stay.

Plaintiff further requests compensatory, punitive, treble damages, as well as interest, costs of suit, attorney's fees, damages for emotional distress and mental anguish, special and consequential damages and demands a jury trial.

Without addressing the merits of the Plaintiff's action with regard to the first five bases, we are forced to rule as a matter of law that this Court lacks any jurisdiction to adjudicate these matters. These actions are without doubt non-core and unrelated to the Plaintiff's bankruptcy case currently pending in this court. 28 U.S.C. §157 (b).

With regard to the sixth basis; namely, a violation of the automatic stay, we find that said stay was properly modified by Order entered by this Court in the main bankruptcy case to which this adversary is associated on February 4, 1991, to permit the particular Texas State Court action to which the Complaint refers (being a divorce proceeding) to be completed. As such is the case, no damages may be obtained pursuant to 11 U.S.C. §362 (h) for willful violation of that automatic stay.

As a result of these findings and conclusions, this Court finds that the Complaint should be dismissed.

IT IS THEREFORE ORDERED that the above-referenced adversary proceeding be and same is hereby dismissed.

The Clerk is directed to mail a copy of this Order to all parties to this action.

/s/ James E. Ryan
JAMES E. RYAN
United States Bankruptcy Judge